

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4502 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BURJORJI NAVORJJI PALIA

Versus

STATE OF GUJARAT  
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Appearance:

MR SB VAKIL for Petitioner

MR BD DESAI, AGP for Respondent No. 1, 2  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/03/2000

ORAL JUDGEMENT

In this petition under Article 226 of the  
Constitution, the petitioner - occupant of the land  
admeasuring 8608 sq.mtrs. (Survey No.82/A/1) in village  
Tunki, in Choryashi Taluka of Surat District, has

challenged the order dated 4.4.1983 passed by the Collector demanding surcharge of Rs.860=80 ps. and other taxes for the land in question. The petitioner has also challenged the order dated 27.6.1983 passed by the State Government in appeal rejecting his revision application under section 211 of the Bombay Land Revenue Code against the aforesaid order of the Collector, Surat.

1. The petitioner has also challenged the provisions of Rule 80-AAA and 81 of the Gujarat Land Revenue Rules, 1972 as inserted/amended by the Gujarat Land Revenue (Amendment) Rules, 1977.

2. The petitioner's case is that, for the land in question the assessment was made in the year 1955 for a period of 30 years w.e.f. 1.8.1955 to 31.7.1985 and the rate was accordingly fixed at Rs.256.37 ps. p.a. of the rate of surcharges, local fund and education cess. According to the petitioner, since the aforesaid amount was paid for the 30 years period since 1955 and since the period of 30 years had not expired when the Collector passed the aforesaid order on 4.4.1983 demanding the surcharge at the higher rate in pursuance of the provisions of Section 80-AAA and 81 of the Gujarat Land Revenue Rules, 1972, the petitioner challenged the said order before the State Government in appeal. The appeal was treated as revision under section 211 of the Bombay Land Revenue Code. After hearing the parties, the Secretary (Appeals), Revenue Department of the State Government dismissed the revision application. Hence, the present petition came to be filed.

3. While admitting this petition, this court granted ad-interim relief against the recovery of enhanced assessment under the impugned order at Annexures-A and B on the condition that the petitioner will furnish the bank guarantee for the payment of enhanced assessment in case the petitioner loses in this litigation, that in the meanwhile the petitioner will pay the assessment at the old rate for the period in question, if the payment accordingly was not made already. This court by order dated 14.9.1983 granted the interim relief which reads as under.:

"Ad-interim relief against recovery of enhanced assessment under the impugned orders at Annexures-'A' and 'B' on the condition that the petitioner will furnish bank guarantee for the payment of enhanced assessment in case the petitioner loses in this litigation. Such bank guarantee will be furnished to the satisfaction

of the second respondent within a period of four weeks from today. The petitioner will meanwhile pay assessment at the old rate for the period in question of the payment accordingly has not been made already.

S.O. to October 6, 1983."

4. The aforesaid interim relief was confirmed by this court by order dated 20.4.1984. Considering the fact that the assessment was already made and the petitioner claimed to have paid the said assessment at the old rate for a period of 30 years w.e.f. 1.8.1955 to 31.7.1985 and considering the fact that w.e.f. 1.8.1985 authorities are entitled to apply the amended rules, and looking to the amount involved and considering the fact that ad-interim relief has operated for the last 17 years, this court disposes of the petition with a liberty to the respondents to levy surcharge for the land in question w.e.f. 1.8.1985. The petition is partly allowed and accordingly disposed of in the aforesaid terms.

(M.S.Shah,J.)

(pathan)